IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13783 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISMAT S SOLANKI

Versus

DENA BANK

Appearance:

1. Special Civil Application No. 13783 of 2003

MR AY KOGJE for Petitioner No. 1

MR KM PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 09/09/2004

ORAL JUDGEMENT

Rule. Mr KM Patel waives service of Rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner's application for voluntary retirement under DBVRS 2000 was accepted by Dena Bank as per their letter dated 25.2.2002 (Annexure "A"). The letter further stated that the ex-gratia payable to the petitioner will be settled on or before the expiry of 45

days from the date of acceptance and the petitioner will be paid ex-gratia and terminal benefits as admissible to the petitioner subject to verification of calculation error, if any, at a later date.

3. Mr Kogje, learned counsel for the petitioner states that since the petitioner was not being paid the amount of gratuity due and payable to the petitioner for more than a year, the petitioner was constrained to file the present petition, but during pendency of the petition in January 2004, the respondents have paid the petitioner gratuity to the tune of Rs.2,26,669/- and, therefore, now the claim of interest only survives. Mr Kogje has prayed for interest at the rate of 12% per annum from the date of retirement till the date of payment of gratuity.

4. Mr KM Patel assisted by Mr Palak Thakker, learned counsel for the respondent-bank opposes the petition and submits that the petitioner is not entitled to any interest. Mr Patel further refers to paragraph 7 of the petition where a reference is made to the departmental inquiry which was conducted against the petitioner and by order dated 21.2.2002, the penalty of withholding of two increments was passed against the petitioner. Mr Patel also points out that the petitioner made the application for gratuity only on 7th May, 2002.

5. Having heard the learned counsel for the parties, it appears to the Court that when the departmental inquiry referred to in paragraph 7 of the petition got concluded on 21.2.2002 before the respondent-bank accepted the petitioner's application for voluntary retirement on 25.2.2002, the said inquiry cannot have any bearing on the question of delay in payment of gratuity. Since the petitioner gave application for gratuity on 7th May, 2002, some time would be taken by the Bank for computing and paying gratuity. In the facts and circumstances of the case, it appears to the Court that since the respondent is a nationalized bank and not a Government department as such period of three months should be considered to be reasonable for computation and payment of the amount of gratuity. Hence, in the facts and circumstances of the case, the respondents are required to be directed to pay the petitioner interest on the amount of gratuity for the period from 27th August 2002 till the date of payment i.e. 27th January 2004. Looking to the other cases in which this Court has been awarding interest at the rate of 9% p.a., the same rate of interest should apply in the instant case also.

6. Accordingly, this petition is partly allowed.

The respondents are directed to pay the petitioner interest at the rate of 9% per annum on the amount of gratuity for the period from 27th August 2002 till the date of payment i.e. 27th January 2004. This direction shall be complied with within one month from the date of receipt of writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M.S. SHAH, J.)

zgs/-